

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	) ) ) )	MDL NO. 1456 Civil Action No. 01-12257-PBS Subcategory Case No. 07-12141-PBS
THIS DOCUMENT RELATES TO:  <i>City of New York, et al.</i>  <i>v.</i>  <i>Abbott Laboratories, et al.</i>	) ) ) ) ) )	Judge Patti J. Saris Magistrate Judge Marianne B. Bowler

**PLAINTIFFS' EMERGENCY MOTION TO QUASH DEFENDANT SCHERING-PLOUGH  
CORPORATION'S, SCHERING CORPORATION'S AND WARRICK  
PHARMACEUTICAL CORPORATION'S CROSS-NOTICE OF CONTINUED  
VIDEOTAPED DEPOSITION OF LYNN DONOVAN**

Plaintiffs, by and through their attorneys of record, file this Emergency Motion to Quash Defendant Schering-Plough Corporation's, Schering Corporation's and Warrick Pharmaceutical Corporation's (hereinafter collectively referred to as "Schering") Cross-Notice of the Second Amended Notice of Taking Continued Videotaped Deposition of Lynn Donovan.

**BACKGROUND**

On or about July 9, 2009, Schering served a cross-notice for the continued videotaped deposition of Lynn Donovan. (Exhibit "A" hereto). Ms. Donovan is an employee of the Hawaii Medicaid program and her deposition initially was noticed in the case styled as State of Hawaii v. Abbott Laboratories, et al., Civil No. 06-1-0720-04 EEH, which has been consolidated for discovery purposes with State of Hawaii v. Schering Corporation, et al., Civil No. 07-1-1639-09 EEH. Both cases are pending in the First Circuit Court, State of Hawaii. Ms. Donovan has

never been employed by the State of New York or any New York County. Plaintiffs were not cross noticed in connection with Ms. Donovan's initial deposition.

Ms. Donovan's continued deposition is set for 9:00 a.m. Hawaii time (which is 3:00 p.m. Eastern) on Monday, July 20, 2009, in Honolulu, Hawaii.

#### ARGUMENT

Plaintiffs object to Schering's cross-notice for multiple reasons. First, it was not timely served. The continuation of Ms. Donovan's deposition in the Hawaii matter was noticed on May 28, 2009. (Exhibit "B" hereto). Yet, Schering waited over 5 weeks until July 9, 2009 before cross-noticing plaintiffs, thus providing only 11 days notice. This Court has entered multiple CMOs making plain that any cross notice had to be issued within two weeks. *See e.g.* CMO 30 [Dkt. # 4406], CMO 31 [Dkt. # 4586], Iowa CMO entered 1/29/09 [Dkt. # 5864]. Even if there were no such requirement, it is entirely unreasonable and contrary to Fed. R. Civ. P. 30(b)(6)(1)<sup>1</sup> for Schering to wait until July 9, 2009 to cross notice counsel in New York for a deposition in Hawaii on July 20, 2009.

Second, the foregoing applies *a fortiori* given that there is no reason whatsoever to believe that the deposition testimony of this witness, who has never worked for New York Medicaid or any New York County will be admissible in this case, or that such testimony will lead to the discovery of admissible evidence.

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<sup>1</sup> Federal Rule 30(b)(6)(1) requires that "[a] party who wants to depose a person by oral questions must give reasonable written notice to every other party." Eleven (11) days notice to counsel in New York for a deposition in Hawaii is indisputably unreasonable, particularly where the witness has no connection whatsoever to the instant case.

CONCLUSION

For all the foregoing reasons, plaintiffs respectfully request that their Motion to Quash be granted and that the Court sign the attached proposed order. (Exhibit "C" hereto).

Dated: July 14, 2009

Respectfully submitted,

**City of New York and New York Counties in  
MDL 1456 except Nassau and Orange by**

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/s/ Joanne M. Cicala

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**Certification Pursuant to Local Rule 7.1**

The undersigned counsel certifies pursuant to Local Rule 7.1(a)(2) that he conferred with counsel for Schering on the issues raised in this motion and has not been able to reach agreement.

Dated: July 14, 2009

/s/ James P. Carroll  
James P. Carroll

**CERTIFICATE OF SERVICE**

I, Kathryn B. Allen, hereby certify that I caused a true and correct copy of the foregoing EMERGENCY Motion to Quash Defendant Schering-Plough Corporation's, Schering Corporation's and Warrick Pharmaceutical Corporation's Cross-Notice of the Continued Videotaped Deposition of Lynn Donovan to be served on counsel of record via electronic service pursuant to paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File and Serve for posting and notification to all parties.

Dated: July 14, 2009

                        /s/                          
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